

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.9645 OF 1995

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

-
1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SHRI PRAVINSINH KHENGARBHAI ROHIT
VERSUS
THE STATE OF GUJARAT & ORS.

Appearance:

MR CB DASTOOR for Petitioner
MS HARSHA DEVYANI for Respondents

Coram: S.K. Keshote,J
Date of decision:01/12/1997

C.A.V. JUDGMENT

#. The petitioner, an unarmed police constable of the police department, filed this Special Civil Application and challenge has been made to the order dated 4th September 1995, annexure 'G', under which his services were terminated on the ground that he was found unfit for the police force by medical authority, i.e. Medical Board of Referees.

#. The facts of the case in brief are that the petitioner was selected for the post of police constable (unarmed), and he was given appointment on the said post on 28th December 1992. The petitioner sustained injury in his left eye while he was discharging duties at the time of Holi festival because of some colour which was spread in the eye of the petitioner. He was hospitalized for treatment of his eye. The petitioner was declared fit for his duties and accordingly he reported for duty and he was directed to undergo training under the letter dated 14th June 1995. Unfortunately again some trouble in the same eye started and the petitioner was directed by respondents, vide their letter dated 16th August 1995, to take medical treatment. The left eye vision of the petitioner was reduced and as such he made a representation to the respondents to provide him work such as clerk, typist, peon for his livelihood. The petitioner was referred by respondents for medical examination and he was declared to be unfit for police force and consequent thereupon the impugned order terminating his services was made on 4th September 1995. Hence this Special Civil Application before this Court.

#. The petition has been contested by respondents and their action has been justified on the ground that when the petitioner was declared to be unfit for police force the respondents had no option but to terminate his services. It has further been submitted that the petitioner remained absent from duties on false pretext. So far as the claim of petitioner for giving him alternate work such as clerk, typist, peon, etc. is concerned, the respondents have stated nothing in the reply.

#. The learned counsel for the petitioner, relying on two decisions of the Hon'ble Supreme Court in the case of Anand Bihari & Ors. v. Rajasthan State Road Transport Corporation & Anr., reported in (1991)1 SCC 731 and in the case of Narendra Kumar Chandla v. State of Haryana & Ors., reported in AIR 1995 SC 159, contended that even if the petitioner is found to be unfit for the post of unarmed police constable, then looking to his qualification of SSC and certificate of GCC examination

of Gujarati Typing at the rate of 25 w.p.m., and the Provisional National Trade Certificate and the fact that he belongs to Schedule Caste, he should have been given alternative work.

#. On the other hand, the learned counsel for the respondents contended that the petitioner was sponsored by the Employment Exchange for the post of police constable (unarmed), and as such, on being found unfit for that post, only the order of termination of his services could have been made. He cannot be given alternative work.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. In this case, it is not in dispute that the petitioner sustained injury in his left eye while he was discharging his duties on the day of Holi. Due to spreading of some colour in his eye, he lost partial vision of that eye. On these facts, the respondents have not contested. The opinion of the Medical Board that the petitioner is not fit for the job of police constable (unarmed), also cannot be doubted. Only the question which calls for consideration of this Court is whether in presence of these facts, the action of respondents to terminate the services of the petitioner can be said to be reasonable and justified. It is not the case of respondents that the petitioner is not suitable for other work, i.e. clerk or peon or typist etc. in the office of respondents. The only say of respondents is that the petitioner's name has been sponsored by Employment Exchange for the post of unarmed police constable and when he was found to be unfit for this post by Medical Board, he cannot be assigned any other work. This defence of respondents is wholly illusory and arbitrary. The petitioner who has been selected for the post of unarmed police constable had sustained injury in his left eye and his case should have been considered keeping in mind the humanitarian considerations. If the petitioner was not found suitable to discharge his duties as police constable (unarmed), then his claim for giving him work as clerk, typist or even as a peon should have been considered sympathetically. This strict and technical approach of respondents in the case of young person who sustained injury in his eye while discharging duties deserves to be deprecated. The learned counsel for respondents, during the course of arguments when asked by the Court, has admitted very fairly that in the Government service, there is a reservation provided for physically handicapped persons. It is a different matter

that for a given job, a particular physical disability may be considered to be ineligibility, but it cannot be said that physically handicapped persons are unfit for all sort of works. In the present case, the physical disability of petitioner is that vision of his left eye has been reduced. That does not mean that the petitioner has become unfit for all other jobs in the department. It is unfortunate that the petitioner has sustained injury while discharging duties but that disability has to be taken only for withdrawing the petitioner from discharging duties as unarmed police constable and not for all other jobs available in the department. Over and above, the petitioner also belongs to Schedule Caste. The petitioner has acted vary fairly and he has even shown his willingness to work as a class IV employee. The case of the petitioner to continue him in service by providing alternative job either as a clerk, typist or even as a class IV has not bee fairly and reasonable considered by respondents.

#. In these facts and circumstances of the case, interest of justice will be served in case this Special Civil Application is disposed of with directions to respondent No.1 to consider the case of petitioner to take him back in service and to assign him work either as a clerk, typist or of class IV. It is further made clear that while considering the case of petitioner, the respondent No.1 shall take into consideration the two decisions of the Hon'ble Supreme Court on which reliance has been placed by learned counsel for the petitioner in this case. The petitioner shall send zerox copy of these two decisions to respondent No.1 by registered post A.D. immediately. This exercise has to be undertaken by respondent No.1 and completed within a period of one month from the date of receipt of certified copy of this order. In case the respondent No.1 decides the matter in favour of petitioner, then he should be given appointment order forthwith and in that eventuality, the past services of the petitioner shall be counted for all purposes, except for arrears of salary and allowances etc. In case the respondent No.1 considers that the petitioner cannot be taken back in service and assigned other work, a reasoned order may be passed and a copy of the same may be sent to the petitioner by registered post A.D. Liberty to the petitioner for revival of this Special Civil Application in case of difficulty. Rule disposed of in aforesaid terms with no order as to costs.

.....

(sunil)